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SUPREME COURT OF THE UNITED STATES

No. 137

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL

vs.

TEXAS & PACIFIC RAILWAY COMPANY, ET AL

PETITION FOR REHEARING AND FOR VACATING ORDER OF COURT DENYING WRIT OF CERTIORARI ENTERED BY THE COURT ON THE 13TH DAY OF OCTOBER, 1947,

And

FOR RECONSIDERATION OF THE QUESTION AND ISSUES PRESENTED.

FRED G. BENTON

Attorney for Applicants
1016 La. National Bank Bldg.
Baton Rouge (6), Louisiana

Of Counsel:

DUPONT & DUPONT
Plaquemine, Louisiana

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FOR RECONSIDERATION OF THE QUESTION AND ISSUES PRESENTED.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

Petitioners, Texas-Pacific Employees, file this application for rehearing under Rule 33 of this Court seeking to obtain action by the Court vacating the order denying the writ of certiorari sought herein entered by the Court on the 13th day of October, 1947, and after such revocation asking that the whole subject matter of the said petition for certiorari be reconsidered, and that the writs sought therein be granted as prayed for in said petition.

2.

1.

The procedural aspects of the present application have been treated by the Court in a number of cases, and the remedies sought have been allowed.¹

2.

For the purpose of the present petition, petitioners reiterate all of the allegations of the original petition for the writ, and reiterate all of the contentions in support thereof which were contained in the supporting brief filed simultaneous therewith.

3.

Petitioners likewise adopt all of the allegations of a petition for rehearing similar to the present which has been or will be filed on behalf of the Railways, and all of the contentions and arguments that will be made in support of the latter petition insofar as these arguments and contentions are consistent with the legal interest of the said Texas-Pacific Employees in the issues here presented.

4.

Petitioners show further that the issues of this case not only present important questions "affecting the application and operation" of the Railway Labor Act, which should be resolved by this Court, *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, 713, and questions of "importance in the orderly administration of the Railway Labor Act," *The Order of Railway Conductors of America, et al v. O. E. Swan, et al*, 15 Law Week 4146, 4147,

1. *Buile v. United States*, 317 U. S. 689, 87 L. Ed. —, 63 Sup. Ct. 256; *Aguilar v. Standard Oil Co.*, 317 U. S. 622, 87 L. Ed. —, 63 Sup. Ct. 433; *Frankfurter and Fisher*, 51 Harv. L. Rev. 577, 579.

cited by this Court on January 13, 1947; *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210; *Steele v. Louisville & N. R. Co., et al.*, 323 U. S. 192, 194; but that the said issues and questions should be reconsidered in the light of the Taft-Hartley Act, H. R. 3020, 61 Statutes at Large, Chapter 120, Public Law 101, 29 USCA, Sections 141-197, enacted by Congress in the 80th Session and made effective on the 23rd day of June, 1947.

5.

The ruling of the Circuit sought to be here corrected amounts to this, namely, the bargaining agency of a labor union can make effective an illegal agreement with the employer grossly discriminating against a minority group of employees within the union and consummated in violation of the law and constitution of the union without the minority group having any remedy until damage has been suffered, and without the employer having the right to invoke declaratory relief such as is here sought even though the employer by the findings of this Court will be liable to the minority group for the damage so suffered.²

6.

The court below dealt with the case as if the union is now proposing to negotiate a new agreement governing the apportionment of Missouri-Pacific and Texas-Pacific Employees. That is indicated in this language which we quote in the footnote below.³

2. *Steele and Tunstall cases, supra.*

3. "The Brotherhood is the accredited representative The carriers are under a statutory duty to negotiate with the Brotherhood If, the negotiation completed, any of the members have a just ground of complaint that the collective agreement is not binding on them for want of authority of the bargaining agent, it will not be binding on them or on the carriers, and they can, as *Steele and Tunstall* did, obtain relief from it."

4.

7.

Actually, the transcript filed here clearly reveals that while this declaratory proceeding was initiated by the Railways union was not proposing to negotiate in any sense where rights of all of its members would be protected. Indeed, the union was not proposing to do anything except to make effect the illegal and unconstitutional decree of its Board of Appeals to vacate and avoid the allocation of employees as fixed in contract of June 2, 1927, and to substitute in lieu thereof new and discriminating apportionment which was sanctioned by said illegal decree. The only negotiation this Court has ever recognized as between the bargaining agency of a union and employer is an open one where the rights of all the members are to be considered. Such negotiation was plainly not here involved.

8.

The declaratory proceedings here should be sustained only to protect the Railways against the damage claim which immediately arise when the new agreement is made effective also to protect the Brotherhood itself against a damage suit on the part of the said minority group, as is allowed under Section 301, Title III of the said Taft-Hartley law.

WHEREFORE, petitioners pray that this rehearing be allowed, and accordingly that appropriate action be taken by the Court vacating the order denying the writ of certiorari originally sought herein, entered by the Court on the 13th day of October, 1947, and after further due proceedings that there be a reconsideration of the issues and questions presented and that due time that an alternative writ of certiorari be granted, and that the Circuit Court of Appeals for the Fifth Circuit be

quired to send up the entire record in this case as is required under the rules of this Court, and that after further due proceedings that said writ be made peremptory and that the judgment and decree of the said respondent Court be avoided and reversed, and that the judgment of the district court be reinstated and made final.

Further for general and equitable relief in the premises.

By Attorney,

FRED G. BETON

1016 La. National Bank Bldg.

Of Counsel:

Dupont & Dupont
Plaquemine, Louisiana

Baton Rouge, Louisiana
Attorneys for Applicants
Texas-Pacific Employees

Certificate of Counsel

We, Dupont & Dupont of Plaquemine, Louisiana, and Fred G. Benton of Baton Rouge, Louisiana, hereby certify that we are the attorneys and of counsel for the Texas-Pacific Employees in the above cause, an applicant for a writ of certiorari in these proceedings, and that the foregoing petition for rehearing is not presented for purposes of delay or vexation, but is in our opinion well founded in law and fact and proper to be filed herein; that a copy of this petition for rehearing has been served by mailing in the United States mails to J. T. Suggs, Texas & Pacific Bldg., Dallas, Texas; M. E. Clinton, Missouri-Kansas-Texas Bldg., Dallas, Texas; Esmond Phelps, United Fruit Bldg., New Orleans, La.; Frank H. Peterman, 909 Sixth Street, Alexandria, La.; H. Payne Breazeale, 517 North Third Street, Baton Rouge, La.; Attorneys for The Texas and Pacific Railway Company; Thomas T. Railey, Missouri Pacific Bldg., St. Louis, Mo.; Murray Hudson and Fred G. Hudson, Jr., Monroe, La.; Attorneys for Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor, and Kemble K. Kennedy, La. National Bank Bldg., Baton Rouge, La.; Attorney for Brotherhood of Railroad Trainmen and Rapides Lodge No. 856 of the Brotherhood of Railroad Trainmen, representing all of the interested parties.

Dupont & Dupont

By _____
Plaquemine, Louisiana

FRED G. BENTON

1016 La. National Bank Bldg.
Baton Rouge, Louisiana

Attorneys for Applicants
Texas-Pacific Employees